

REMARKS/ARGUMENTS

The Office Action dated February 14, 2008 has been received and carefully considered. Claims 1-20 are pending in the application with claims 1, 10, 19, and 20 being the independent claims. Applicants respectfully submit amendments to claims 1, 10, 19, and 20. No new matter is believed to be entered with the amendments, and support for the amendments may be found at least at, for example, page 6, lines 12-14, page 13, lines 23-26, and page 15, lines 1-10 of the specification, and Figures 2, 3, and 4, and associated text. Applicants respectfully traverse the rejection of claims 1-20, and respectfully request reconsideration of the rejection of claims 1-20 for at least the following reasons.

I. Pending Rejections

The Office Action rejects claims 1-20 under 35 U.S.C. § 112, second paragraph as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter.

II. Piecemeal Prosecution is Not Preferred

At the outset, Applicants respectfully note that MPEP § 707.07(g) advises against piecemeal examination. “The examiner ordinarily should reject each claim on all valid grounds available. . . .” MPEP § 707.07(g). While Applicants have amended claims 1, 10, 19, and 20 in this Response in order to clarify the subject matter, Applicants believe that the original claims presented at least sufficient structure to conduct a search in the related art. New rejections to existing language denies Applicants the ability to efficiently advance prosecution. In the current situation, for example, Applicants may have a *first* chance to address 35 U.S.C. § 102 or 35 U.S.C. § 103 rejections under a final Office Action, *after* the effective close of prosecution. Moreover, this application was filed February 6, 2004, and has been pending for almost four years before issuance of the first Office Action.

III. Claims 1-20 Are Not Indefinite

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. In particular, the Office Action notes that the “function of analyzing of demographic data and modifying the merchant layout in the claims are unclear. . . .” Office Action, page 2. The Office

Action then suggests adding additional limitations to the claims - “i.e., is demographic data analyzed [on a] daily basis, for example?,” and “i.e., are products relocated to [a] different location, for example?” Office Action, page 2. To the extent that this rejection is not rendered moot in view of the above-referenced amendments to claims 1, 10, 19, and 20, Applicants respectfully traverse and request reconsideration of this rejection.

As stated in MPEP § 2173.04, breadth of a claim is not to be equated with indefiniteness. If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. § 112, second paragraph.

Applicants respectfully assert that the original claims as presented are not indefinite. For example, the Office Action notes that “the claims fail to clarify how to analyze demographic data (i.e., is demographic data analyzed [on a] daily basis, for example?). . . .” With respect to claim 1, for example, presenting one or more time periods for the analysis for demographic data does not serve to clarify the underlying method, but only adds new narrowing limits to the method. Similarly, adding examples of modifications to the merchant layout serves only to limit the method, not to clarify the underlying method. As independent claim 1 is not indefinite, the dependent claims 2-9 associated with claim 1 are not indefinite. Similar suggestions also only serve to limit the system claimed in claims 10 and 20 and associated dependent claims, and the apparatus of claim 19.

The touchstone of a section 112, second paragraph rejection is if one of ordinary skill in the art could understand the claim. MPEP § 2173.02 (“The test for definiteness under 35 U.S.C. 112, second paragraph, is whether ‘those skilled in the art would understand what is claimed when the claim is read in light of the specification.’ *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986)”). The Office Action does not, and cannot, show that the claims are internally inconsistent or in any way fail to describe the methods, apparatus, or systems as claimed to one of ordinary skill in the art. Indeed, the Office Action does not suggest that the language of the claims themselves be clarified, but only suggests additional claim limitations. By only suggesting additional modifying language for two elements of the claims, the Office Action tacitly admits that one of ordinary skill could understand the underlying methods, apparatus, and systems in the claims. Applicants therefore respectfully request that the rejection of claims 1-20 under 35 U.S.C. § 112, second paragraph be withdrawn.

CONCLUSION

It is respectfully submitted that this application and all pending claims are in condition for allowance and such disposition is earnestly solicited. If the Examiner believes that a telephone conference or interview would advance prosecution of this application in any manner, the Examiner is requested to contact the undersigned attorney.

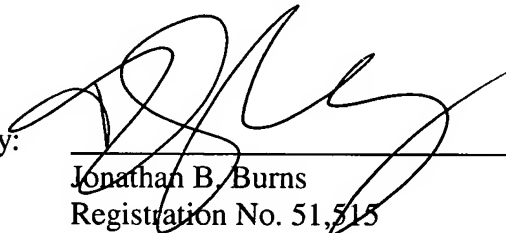
To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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